

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 23, 2021 at 2:00 p.m.

1.	<u>21-20108</u>-E-13 <u>DPC-1</u>	DONNA DALEY James Keenan	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-22-21 <u>[16]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 22, 2021. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

A. Debtor failed to appear at the Meeting of Creditors.

- B. The Plan exceeds maximum months allowed under the Bankruptcy Code.

DISCUSSION

Trustee's objections are well-taken.

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The meeting was continued to March 11, 2021, and then again to March 18, 2021. Debtor appeared at both continued meetings and Trustee reports that the meeting has been concluded as to Debtor. Thus, this objection is resolved in favor of Debtor.

Plan Exceeds Term

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 81 months due to unsecured creditors receiving 35% dividend, and Trustee fees and attorney fees also need to be paid. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 25, 2021. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to provide business documents.
- B. The Plan unfairly discriminates against creditors with general unsecured claims.
- C. Debtor has failed to accurately complete the Chapter 13 documents.

DISCUSSION

Trustee's objections are well-taken

Failure to File Documents Related to Business

Debtor has failed to timely provide Trustee with business documents including:

- A. An incomplete questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Unfair Discrimination Against Unsecured Claims

Trustee also opposes confirmation due to possible unfair discrimination to unsecured claims under 11 U.S.C. § 1322(b)(1). Debtor proposes to pay 7.00% to unsecured claims. However, on the eve of bankruptcy (this case being filed on January 15, 2021) Debtor made a lump sum payment to JPMorgan Chase (holder of the note for Debtor's residence) in the amount of \$19,500. This money came from assets of the Debtor that were sold to Debtor's son (which sale may or may not have been for fair market value). ^{FN.1}

FN. 1. Debtor lists one child as a dependent on Schedule J, a 23 year old son who is identified as a "student." It is not clear if this dependent son is the son who purchased the asset.

The JPMorgan Chase Bank Proof of Claim, No. 6-1, has loan documentation attached that it is a home equity loan, secured only by Debtor's residence.

On Schedule D Debtor lists Wells Fargo Home Mortgage having a secured claim for \$251,743 secured by Debtor's residence. Dckt. 1 at 23. JPMorgan Chase Bank is also listed as having a secured claim of \$38,872, for which the collateral is listed as a 2016 Ford Edge and that is "also secured by house." *Id.*, 22. In Proof of Claim No. 6-1 JPMorgan Chase Bank states that it has a lien only on Debtor's residence to secure its claim in the amount of \$16,236.60.

Debtor also lists the residence to have a value of \$460,000 on Schedule D, and claims an exemption of \$300,000 in the residence on Schedule C.

Incomplete and Inaccurate Chapter 13 Documents

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that Debtor has failed to provide referenced documents and has also failed to accurately complete the Chapter 13 documents with information provided at the Meeting of Creditors, such as:

- Debtor failed to provide a list of household goods and furnishings with Schedule

B;

- Debtor omitted 31-year old son living with Debtor from Schedules I and J
- Debtors have consolidated all bank accounts and Trustee is unable to differentiate wage income from business income
- Debtors failed to list several payments made to creditors in the last 90 days
- Debtors closed two accounts and combined these accounts into one entry, without indicating the institutions, the specific accounts closed, when they were closed, and the balance of each account.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is denied.</p>
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The debtor, Vanessa Tristant ("Debtor") seeks confirmation of the Modified Plan because Debtor separated from her husband and is currently in the process of divorce, and has had other costs to take care of and as a result missed payments. Declaration, Dckt. 33. The Modified Plan provides payments of \$150.00 for months 29 through 60, and a 39.52% percent dividend to creditors with unsecured claims totaling \$33,407.35. Modified Plan, Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 8, 2021. Dckt. 42. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent in plan payment.
- B. Trustee is not certain whether the modified plan is justified based on lack of knowledge about Debtor's auto expense.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$150.00 delinquent in plan payments, which represents one month of the \$150.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Trustee does indicate an electronic payment for \$150.00 is pending. At the hearing
XXXXXXX

Auto Expense

Trustee is not certain what Debtor's actual or projected auto expense is. While there is an auto expense in Schedule J, no creditor is listed as either Class 2 or Class 4 for this expense. Debtor's Schedule A/B had identified a 2008 Ford F250 in the name of non-filing spouse which should be clarified now that Debtor is separated and divorcing.

Debtor filed a Response on March 16, 2021 stating that her former spouse has the 2008 vehicle, but that per the divorce settlement, she is now responsible for the payment of a Ford F150 purchased in 2018. Dckt. 45. Debtor will file Supplemental schedules to account for the \$550 payment.

Debtor filed Supplemental Schedule J on March 16, 2021. Dckt. 48. Debtor now lists a car payment for \$550.00 and has reduced the entertainment expense from \$100.00 to \$50.00. Where Debtor has two teenagers (ages 15 and 17) living with her, a budget of \$50 for entertainment purposes does not seem realistic.

At the hearing XXXXXXXX

The Modified Plan complies / does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Vanessa Tristant ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is XXXXXX.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and the Office of the United States Trustee on February 16, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

The debtor, Yaminah Head ("Debtor") seeks confirmation of the Modified Plan under the CARES Act because she has defaulted on plan payments after losing her employment due to COVID-19 and has also decided to surrender a vehicle. Declaration, Dckt. 55. The Modified Plan provides payments of \$5,130.00 for 66 months, and a 6.4 percent dividend to unsecured claims totaling \$45,590.46. Modified Plan, Dckt. 53. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that Trustee is unable to effectively administer the plan due to post-petition arrearage.

DISCUSSION

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make class 1 creditor Carrington Mortgage Services installment payments for months November 2020, December 2020, and February 2021. Trustee's accounting shows that the amount due for the unpaid installments is \$11,373.78.

Debtor's previous plan accounted for post-petition arrearage for the months of May and June 2020 in the amount of \$7,425.86. Trustee argues that while the modified plan does attempt to specify a cure of the post-petition arrearage in the amount of \$15,008.38 (\$7,425.86 + \$7,582.52), this amount appears to consolidate the arrearage and excludes February 2021 in the amount of \$3,791.26. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Yaminah Head ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is xxxxxxx .
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The debtors, Richard Craig Parrish and Angela Dale Parrish ("Debtor") seek confirmation of the Modified Plan because of a 9.9% decrease in income due to COVID-19 and expenses related to an immediate family member who needed advanced medical treatment as a result of contracting COVID-19. Declaration, Dckt. 87. The Modified Plan provides payments of \$3,250.00 for 68 months, and a zero (0) percent dividend to unsecured claims totaling \$84,328.71. Modified Plan, Dckt. 88. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 100. Trustee opposes confirmation of the Plan on the basis that:

- A. Trustee is uncertain Debtor can make the proposed plan payment.
- B. Debtor is delinquent under the confirmed plan.
- C. Debtor discloses two adult children living with Debtor, but does not disclose any

contribution by the children.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments. The Chapter 13 Trustee asserts that Debtor is \$17,923.58 delinquent in plan payments, which represents multiple months of the \$3,145.00 plan payment under the confirmed plan.

Trustee points the court to Debtor's most recent Schedules I and J filed in December 2019 which indicated their ability to pay \$3,145.00. Moreover, Trustee notes that Debtor's Schedules disclose two adult children living with them but does not disclose whether they make any contributions. Trustee further notes that Debtor is now proposing plan payments in the amount \$3,250.00 but no Supplemental Schedules I and J have been filed.

Debtor filed Supplemental Schedules I and J on March 3, 2021. Dckt. 96. The Supplemental Schedules I and J show increased monthly net income of \$3,250.03. The court's review of Debtor's Supplemental Schedule I reveals a decrease in monthly gross income for Debtor from \$8,218.17 to \$7,796.21, and a decrease in payroll deductions from \$2,633.28 to \$1,968.18. Dckt. 96 at 5; see also, Dckt. 65 at 2. Thus, leaving Debtor with a monthly income of \$6,984.03.

A review of Debtor's Supplemental Schedule J shows that several expenses have substantially increased, including utilities from \$1,205.00 to \$1,401.00 and taxes ("dmv" and "tax deductions") from \$0.00 to \$389.00. Other expenses have substantially decreased such as: food and house keeping supplies from \$1,073.14 to \$900.00; medical and dental expenses from \$90.00 to \$73.00; transportation from \$468.51 to \$250.00; life insurance and vehicle insurance from \$360.00 to \$306.00. Thus, expenses have changed from \$3,596.89 to \$3,734.00, and after accounting for increase in income, leaves Debtor with a monthly net income of \$3,250.03.

At the hearing **xxxxxx**

The Modified Plan complies / does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Richard Craig Parrish and Angela Dale Parrish ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is **xxxxx**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice (*as of date of filing), and Office of the United States Trustee on February 2, 2021. By the court's calculation, 49 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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The Objection to Confirmation of Plan is sustained.

Sun West Mortgage Company, Inc ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that fails to cure pre-petition arrearage.

DISCUSSION

Creditor's objections are well-taken.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim for its senior loan in which it asserts \$4,698.75 in pre-petition arrearage. Proof of claim, 9-1. Additionally, Creditor has filed a second timely proof of claim for its secured HELOC loan in which it asserts \$75.00 in pre-petition arrearage. Proof of Claim, 6-1. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as

maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Sun West Mortgage Company, Inc (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on February 23, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Debtor failed to furnish proof of social security number.
- B. There is a pending Objection to Confirmation by a creditor with a secured claim for failure to cure pre-petition arrearage.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341

evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Failure to Cure Arrearage

Creditor Sun West Mortgage Company, Inc filed an Objection to Confirmation set to be heard at the instant hearing. Dckt. 17. The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor's objection has been sustained.

Debtor having failed to present her social security number at the meeting of creditor, the instant Objection is also sustained, and the Plan is not confirmed under this specific ground as well.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. No opposition was presented at the hearing.

The Motion to Extend the Automatic Stay is XXXXX.

Amy Mary McClellan ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-27735) was dismissed on August 19, 2020, after Debtor failed to confirm a plan within a reasonable time. *See* Order, Bankr. E.D. Cal. No. 19-27735, Dckt. 51, August 19, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because they were unable to confirm a plan based on their income and difficulties with family who was to contribute to the plan.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C.

§ 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good faith/rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. In the declaration, Debtor asserts that she now has \$1,838 a month in income, which she believes will be sufficient to fund the plan. Dckt. 14. However, Debtor does not explain the source of this “new consistent income.”

The court, Trustee, and parties in interest are unable to review Debtor's Schedules as none have been filed. Debtor has filed a Motion to Extend the deadline to file Schedules to February 23, 2021. Dckt. 16.

The court grants the Motion on an interim basis through and including March 26, 2021, with the hearing continued to 2:00 p.m. on March 23, 2021.

March 23, 2021 Hearing

Debtor filed the Schedules on February 22, 2021. Dckt. 29. Schedule I indicates that Debtor is employed but no employer is listed, and as the court turns to line 8d, Debtor indicates that she is receiving unemployment compensation in the amount of \$1,838.00 and under question 13 for whether she expects an increase or decrease within the year after filing, Debtor indicates “Yes”, and explains:

Debtor expects Unemployment to Continue through at least May. Debtor anticipates fixing up house so that she can rent out 1 room and building up her car detailing business, which she has been closed due to the pandemic.

Dckt. 29 at 22.

Moreover, on March 11, 2021 Trustee filed Trustee's Report on the 341 Meeting indicating that Debtor failed to appear but that Debtor's Counsel did, and that the meeting was continued to April 1, 2021.

As of the drafting of this pre-hearing disposition, neither Trustee nor other parties have filed any pleadings or documents concerning the instant motion.

At the hearing **XXXXXXX**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Amended Proof of Service, Dckt. 44, states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on March 3, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Value Collateral and Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Value Collateral and Secured Claim of Wells Fargo Mortgage ("Creditor") is denied without prejudice.

The Motion to Value is also denied without prejudice for the additional relief against the additional parties added to this Contested Matter against Wells Fargo Mortgage.

The Motion to Value filed by Amy Mary McClellan ("Debtor") to value the secured claim of Wells Fargo Mortgage ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 37. Debtor is the owner of the subject real property commonly known as 2132 Pine Street, Quincy, California ("Property"). Debtor seeks to value the Property at a fair market value of \$157,000 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Additionally, Debtor seeks to value at zero (0) the secured liens of Hudson and Keyes LLC and Resurgence Financial LLC both having recorded abstracts of judgments against the Property.

Debtor further claims an exemption on the property pursuant to 11 U.S.C. §704.030 which Debtor declares exempts any equity in the Residence. Declaration, Dckt. 37, ¶ 4.

APPLICABLE LAW

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

DISCUSSION

In reality, though titled Motion to Value, the instant motion seeks to avoid the judicial lien of Hudson and Keyes LLC ("Creditor Hudson") and the judicial lien of Resurgence Financial LLC ("Creditor Resurgence") against property of the debtor.

A judgment was entered against Debtor in favor of Creditor Hudson in the amount of \$25,660.90. Exhibit 1, Dckt. 36. An abstract of judgment was recorded with Plumas County on December 3, 2018, that encumbers the Property. *Id.*

A judgment was entered against Debtor in favor of Creditor Hudson in the amount of \$2,971.60. Exhibit 2, Dckt. 36. An abstract of judgment was recorded with Plumas County on February 14, 2019, that encumbers the Property. *Id.*

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on March 12, 2021 asserting that the liens are fully secured and are not impairing the exemption claimed on the property. Dckt. 47.

DISCUSSION

Debtor has chosen to cut the corner and slop into one bucket three different contested matters against three different persons. Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 are not incorporated into Federal Rule of Bankruptcy Procedure 9014 for contested matters. A contested matter, with a hearing set on anywhere from fourteen to forty-two days notice are not permitted to combine multiple claims against one person, nor multiple claims against multiple parties into one contested matter.

The court does not grant after the fact relief pursuant to Federal Rule of Bankruptcy Procedure 9014(c) to make Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable in this contested matter.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Amy Mary McClellan (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2021. By the court's calculation, 33 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

Movant has given two days less than the required days per the local rules. At the hearing
xxxxxxx

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is xxxxxx .

The debtor, Micah Sean Metz and Tina Marie Metz ("Debtor") seeks confirmation of the Modified Plan due to a reduction in income after Debtor Micah sustained an injury in April 2020 which prevented him from working and the surgery to repair the injury was delayed until February 2021 due to COVID-19. Declaration, Dckt. 31. The Modified Plan provides payments of \$680.00 for 46 months, and a 100 percent dividend to unsecured claims totaling \$26,906.21. Modified Plan, Dckt. 33. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 41. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor does not plead with particularity the grounds for modification of the plan.
- B. Debtor's Schedule I and J, marked both supplemental and amended, in support of this motion are filed as exhibits only, and not properly identified on the Court's docket.

DISCUSSION

Pleading Requirements

Trustee argues that the Motion fails to comply with FRBP 9013 which requires a motion to plead with particularity the grounds upon which the requested relief is based.

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such

motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

A review of the Motion shows Trustee’s concerns are valid. The insufficient statements made by Movant are:

Since the confirmation of the Plan, the financial circumstances of the Debtors and/or the legal circumstances of the Plan have changed (See the Declaration in Support of Motion for Order Confirming the Debtors’ Modified First Modified Chapter 13 Plan Dated February 17, 2021, filed concurrently with this Motion.). As a result, the Debtor’s Plan must be modified.

Motion, ¶ 3.

Those “grounds” are merely an incorporation by reference by Movant. Presumably, Movant

believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

A. Declaration of Micah and Tina Metz

The court generally declines an opportunity to do associate attorney work and assemble motions for parties.

~~Debtor’s Declaration filed in support of the confirmation (Dckt. 31) and Debtor’s subsequently filed Supplemental Declaration (Dckt. 44), provide sufficient detail regarding the course of events that caused Debtor’s inability to make the May 2020 through January 2021 payments under the confirmed plan and why they believe they will be able to make the modified payment. Dckt. 31, ¶¶ 4-7, Dckt. 44, ¶¶ 3-12. Moreover, Debtor testifies to having made the February 2021 plan payment under the proposed modified plan. Dckt. 44, ¶ 14.~~

Schedules I and J

Trustee points the court to debtor having filed Supplemental Schedules I and J as exhibits in support of the proposed plan. Dckt. 35. After Trustee’s Opposition, Debtor’s Supplemental Schedules I and J were properly filed and are found in the court’s docket as of March 10, 2021. Dckt. 46. Thus, this resolves Trustee’s objection.

~~Trustee’s objections having been resolved in favor of Debtor, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Micah Sean Metz and Tina Marie Metz (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 17, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed~~

~~order to the court.~~

11. [19-27259-E-13](#) **MICAH/TINA METZ** **CONTINUED MOTION TO DISMISS**
[DPC-2](#) **Bruce Dwiggin** **CASE**
2-2-21 [\[25\]](#)

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 2, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is XXXXXXX .

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Micah Metz and Tina Metz (“Debtor”), are delinquent in plan payments.

TRUSTEE’S RESPONSE

Trustee filed a Response on February 24, 2021 noting to the court that while Debtor did not file an Opposition, Debtor filed a Modified Plan and a Motion to Confirm. Dckt. 37. Trustee requests that this Motion be continued so that the Motion to Confirm be heard.

DISCUSSION

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on February 17, 2021. Dckts. 33, 29. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 31. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Though unopposed, the Trustee (fortunately for Debtor) advised the court in a “Reply” that Debtor was prosecuting confirmation of a modified plan and requests that the hearing on the Motion to Dismiss be continued. Dckt. 37. Though unopposed, the court grants Trustee’s request to continue the hearing.

March 23, 2021 Hearing

~~Debtor's proposed modified plan was confirmed on March 23, 2021.~~

~~Based on the foregoing, the Motion is denied.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The court notes that the Certificate of Service filed on February 17, 2021 states service having been given on March 17, 2021. The court takes this as a clerical error where the drafting party meant to state that the documents were served on February 17, 2021.

At the hearing Movant clarified **xxxxxxx**

Moreover, Movant has given one day less than the required number by the local rules. At the hearing **xxxxxxx**

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is xxxxx.

The debtor, Cathryn Elaine Kingsbury ("Debtor") seeks confirmation of the Modified Plan because Debtor's income was temporarily decreased due to COVID-19. Declaration, Dckt. 24. The Modified Plan provides payments of 2,253.00 for 48 months, and a zero (0) percent dividend to unsecured claims totaling \$2,429.00. Modified Plan, Dckt. 26. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 36. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan does not provide for February 2021 plan payment.
- B. Debtor's Schedule I and J, marked both supplemental and amended, were filed as exhibits only.
- C. Debtor's proposed plan does not provide for the secured portion of the claim by the Internal Revenue Service.

DISCUSSION

February Plan Payment

According to the Trustee, the proposed plan fails to provide payment for February 2021, where the plan proposes to begin making payments on month 13 which is March 2021.

Debtor filed a Response on March 16, 2021. Dckt. 41. In regards to the February plan payment, Counsel admits to an accounting error, and states that Debtor made a February payment of \$2,500 that was received on March 3, 2021. *Id.* at ¶ 1. Thus, Debtor's plan will pay \$2,253.00 for 49 months, increasing the amount available to creditors. *Id.* at ¶ 2.

Schedules I and J

According to Trustee, Debtor has filed Amended/Supplemental Schedules I and J as exhibits. Trustee argues that filing the schedules as exhibits only and not on court's docket makes it difficult for parties to find Debtor's most recent budget.

A review of the court's docket shows Debtor's Supplemental Schedules I and J were properly filed on March 16, 2021. Dckt. 39. Thus, this objection is resolved in favor of Debtor.

Failure to Provide for Internal Revenue Service Secured Claim

The Chapter 13 Trustee asserts that the Internal Revenue Service has a claim for \$4,496.36 in secured debt, \$7,885.15 in priority unsecured debt, and \$27,045.23 in general unsecured debt. Proof of Claim 6, filed on May 4, 2020. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

In regards to the Secured Portion of the Internal Revenue Service Claim, the Reply provides a detailed explanation of how there are sufficient funds to make the direct payment to the IRS even when taking into consideration the other payments to be made for the mortgage, pre-petition arrearage, trustee's fees, attorney's fees, and the Franchise Tax Board priority claim. Dckt. 41, ¶¶ 6-18.

At the hearing **xxxxxxx**

~~————— The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~————— Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Cathryn Elaine Kingsbury ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 17, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 2, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Cathryn Kingsbury ("Debtor"), is delinquent in plan payments.

TRUSTEE'S RESPONSE

Trustee filed a Response on February 24, 2021 noting to the court that while Debtor did not file an Opposition, Debtor filed a Modified Plan and a Motion to Confirm. Dckt. 32. Trustee requests that this Motion be continued so that the Motion to Confirm be heard.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on February 17, 2021. Dckt. 26, 22. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 24. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The court continues the hearing on the Motion to Dismiss as requested by the Trustee.

March 23, 2021 Hearing

~~Debtor's proposed modified plan was confirmed on March 23, 2021. Based on the foregoing, The Motion is denied.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is XXXXX.

The debtor, Lesley Marie Palo ("Debtor") seeks confirmation of the Modified Plan to account for new mortgage payments which now bring her mortgage current, new employment, and an increase in expenses. Declaration, Dckt. 45. The Modified Plan provides payments of \$812.00 for 16 months, and a 100 percent dividend to unsecured claims totaling \$29,462.00. Modified Plan, Dckt. 47. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 50. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor did not file the loan modification agreement.
- B. Debtor's Amended Schedule I fails to list her brother's contribution as stated in Debtor's original schedules.

DISCUSSION

Brother's Contribution

Trustee states that Debtor no longer includes her brother's monthly contribution of rent and support, who had been living in her household since September 2016. Trustee presumes that the brother must have left the resident but that Debtor has failed to provide such information.

Debtor filed a Response on March 16, 2020. Dckt. 53. Debtor explains that Debtor's brother was not included in the amended Schedule I because he is not a member of her household anymore and is no longer making a contribution.

However, neither the Reply nor the Declaration of Debtor state that the brother is not living in the Debtor's house, having living expenses subsidized by Debtor, and benefitting from Debtor during the time Debtor seeks extraordinary relief from under the Bankruptcy Code.

At the hearing, **XXXXXXX**

Loan Modification

According to Trustee, the plan relies on a loan modification that does not have court approval. Moreover, Trustee asserts that Debtor has not filed a motion to approve a permanent loan modification, has not provided a copy of the loan modification agreement, and the plan relies on a Court approved permanent loan modification to reclassify the mortgage and arrears to from Class 1 to Class 4.

In the Response, Debtor also explains that because the loan modification cover letter included all the relevant details, such as principal balance, interest rate, monthly payment, and length of loan, Debtor believed that this letter was sufficient and has now filed the actual loan modification agreement as Exhibit A. *See* Dckt. 55.

The court notes that indeed Debtor has failed to file a motion to approve this loan modification. The court authorized Debtor to make three direct trial mortgage payments but no permanent loan modification has been authorized. *See* Civil Minutes, Dckt. 41.

At the hearing **XXXXXXXX**

~~————— The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~————— Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Lesley Marie Palo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~IT IS ORDERED~~ that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 10, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [19-25663-E-13](#) **AUDIE CRUZ AND ABIGAIL** **MOTION TO APPROVE LOAN**
[PPR-1](#) **DY-CRUZ** **MODIFICATION**
 Seth Hanson **3-8-21 [35]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 8, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Approve Loan Modification is XXXXX.

The Motion to Approve Loan Modification filed by Quicken Loan LLC formerly known as Quicken Loans Inc. ("Creditor") and Audie Pierre Lauser Cruz and Abigail Limquiaco Dy-Cruz ("Debtor") seeks court approval for Debtor to incur post-petition credit. Creditor, whose claim the Plan provides for in Class 4, has agreed to a loan modification, where Debtor "borrows" an additional \$25,002.64 to cure the current outstanding loan delinquency and the terms of the loan remain the same for interest rate of 5.625%, with the new monthly payment increasing to \$3,125.33 a month.

The Motion is supported by the Declaration of James Winbush, Loss Mitigation Officer for

Creditor. Dckt. 38. The Declaration affirms the authenticity of the Exhibits filed in Support of this Motion. Exhibits, Dckt. 37. The declaration also restates the terms of the Loan Modification.

No Declaration by Debtor has been filed in support of this motion.

TRUSTEE'S RESPONSE

Trustee filed a Response on March 12, 2021. Dckt. 40. Trustee brings to the court's attention the loan monthly payment due February 1, 2021 in the amount of \$3,125.33 would exceed the payment amount of \$3,092.92 provided for in Debtor's confirmed plan. Plan, Dckt. 2, §3.07, Item 1. Trustee also notes that the modification leaves the existing terms of the note in place; the agreement is only to cure the existing default under the note.

DISCUSSION

The court is uncertain that this post-petition financing is consistent with the Chapter 13 Plan in this and with Debtor's ability to fund said Plan. Indeed, it seems like this loan modification may not be in Debtor's best interest. The court is also concerned with the lack of a declaration from Debtor affirming their desire to pursue this financing and their ability to pay this claim on the modified terms.

While no declaration of Debtor is provided, this is a joint motion by Creditor's Counsel and Debtor's counsel. Creditor does provide its representative to authenticate the documents.

While the dollar amounts in the Plan and under the Modification are slightly off, this should be something Debtor can subsequently address.

At the hearing ~~xxxxxx~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Approve Loan Modification filed by Quicken Loan LLC formerly known as Quicken Loans Inc. ("Creditor") and Audie Pierre Lauser Cruz and Abigail Limquiaco Dy-Cruz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the court authorizes Audie Pierre Lauser Cruz and Abigail Limquiaco Dy-Cruz to amend the terms of the loan with Quicken Loan LLC formerly known as Quicken Loans Inc. ("Creditor"), which is secured by the real property commonly known as 1524 Bailey Dr., Fairfield, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 37).~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is confirmed.</p>

The debtor, Cynthia J. Paysinger ("Debtor") seeks confirmation of the Modified Plan because Debtor's employer cut work hours and put him on sick leave in March 2020 and has been unsuccessful in obtaining unemployment benefits. Declaration, Dckt. 169. The Modified Plan provides payments of \$2,500.00 for 53 months, and a zero (0) percent dividend to unsecured claims totaling \$1,556.07. Modified Plan, Dckt. 170. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 173. Trustee opposes confirmation of the Plan on the basis that Debtor may not be able to make the modified plan payment.

DISCUSSION

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's supplemental Schedule I filed February 10, 2021 includes unemployment compensation of \$800.00 while Debtor's Declaration, Dckt. 172, states "...I have not been able to receive any E.D.D. but is in the appeals department." Debtor has not filed a Supplemental J relative to her current expenses. The last Schedule J was filed February 28, 2020, Dckt. 149. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor filed a Supplemental Declaration on March 15, 2021. Dckt. 177. Debtor testifies that she has succeeded in the E.D.D. appeal and is receiving \$504.00 per week in unemployment benefits. *Id.*, ¶¶ 2, 5.

The court's review of the docket shows Debtor filed Supplemental Schedules I and J, and an accompanying declaration on March 15, 2021. Dckts. 176, 177. Schedule I shows Debtor has net monthly income in the amount of \$5,207.00, which includes unemployment compensation of \$2,117.00 per month. Dckt. 176, p. 5. Schedule J shows monthly expenses of \$2,706.00, and a net monthly income of \$2,500.31. *Id.* at p. 7. Debtor's supplemental Schedules I and J show that Debtor can afford the plan relative to her current income and expenses.

Debtor having addressed Trustee's objections, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Cynthia J. Paysinger ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 10, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2020. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtor, Gregory Roger Borgerson and Cherie Marquez Borgerson (“Debtor”) seeks confirmation of the Third Amended Chapter 13 Plan. The Plan provides eight (8) payments of \$2,530.00, followed by 52 payments of \$3,764.00, and a zero (0) percent dividend to creditors with unsecured claims totaling \$18,313.15. Plan, Dckt. 89. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on January 26, 2021. Dckt. 109. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not filed tax returns.
- B. Plan exceeds the 60 months maximum under the bankruptcy code.
- C. Debtor has not submitted a loan modification.

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2015, 2017, and 2019 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 70 months because priority claims total \$57,213.01, where Debtor estimated \$21,053.71. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

No Loan Modification Documents Provided

Trustee points the court to the Plan's "Ensminger Provisions" included in the Plan providing for adequate protection payments to PHH Mortgage and Bosco/Franklin Financial Management Corp., as it did the prior three plans, but Creditor Bosco's objection reveals that Debtor have not submitted a loan modification since February 2019.

Trustee adds that Debtor could have provided documents as an exhibit showing the application has been made or submitted, which the court may have considered for the purpose of confirmation and yet Debtor failed to do so.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Parties agreed to continue the hearing while Debtor and Debtor's counsel address communications relating to the reported loan modifications.

March 5, 2021 Status Report

On March 5, 2021 Trustee filed a Status Report informing the court that Debtor is current in plan payments; however, Debtor has not provided evidence that all tax returns have been filed. Dckt. 118.

The Franchise Tax Board has filed an amended Proof of Claim indicating that Debtor owes \$3,608.28 priority claim and \$2,740.56 unsecured claim, where the proof of claim also indicates that no tax returns have been filed for years 2015, 2017, and 2019. *Id.* See Proof Claim 9-2. Moreover, Trustee notes that Debtor has not provided the loan modification documents or proof that such application has been made. *Id.*

March 23, 2021 Hearing

At the hearing **xxxxxxx**

18. [20-22066](#)-E-13 GREGORY/CHERIE
[RAS-1](#) BORGERSON
 Randall Ensminger
HSBC BANK USA, N.A. VS.

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
12-10-20 [\[75\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 10, 2020. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Relief from the Automatic Stay is XXXXX.</p>
--

HSBC Bank USA, N.A., as Trustee on behalf of ACE Securities Corp. Home Equity Loan Trust and for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-ASAP6, Asset Backed Pass-Through Certificates (“Movant”) seeks relief from the automatic stay with respect to Gregory Roger Borgerson and Cherie Marquez Borgerson’s (“Debtor”) real property commonly known as 2105 Pimlico Court, Lincoln, California (“Property”). Movant has provided the Declaration of Miguel Baque to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$4,192.96 in post-petition payments past due. Declaration, Dckt. 77.

CHAPTER 13 TRUSTEE’S RESPONSE

David P. Cusick (“the Chapter 13 Trustee”) filed a Response on December 16, 2020. Dckt.

81. Trustee points out that Debtor have no confirmed plan and informs the court that Debtor are delinquent in plan payment under their last proposed plan. *Id.*, at 1. Trustee further states having disbursed a total of \$9,515.14 towards Debtor's mortgage where Movant has filed Proof of Claim 7-1 for the secured amount of \$353,696.28 and \$27,534.93 in arrearage. *Id.*, at 2.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 29, 2020. Dckt. 94. Debtor asserts that the motion should be denied on the basis that Debtor has filed a third amended plan which provides for on-going mortgage payments and post-petition arrearage payments to Movant and that a loan modification application is currently being considered by Movant. *Id.*, at 1-2. Adding that a loan modification has also been submitted with the creditor that has a second deed of trust on the Property. *Id.*, at 2.

According to Debtor, final decisions on both loan modifications are still pending and Debtor should be allowed to continue making adequate protection payments. *Id.* Moreover, Debtors argue that a small equity cushion exists if the court disallows Movant's collection of the \$10,126.49 of cost arrearage claimed in Movant's motion. *Id.*

Debtor filed their Declaration in support of the Opposition. Dckt. 95. Debtors testify that their income position has improved dramatically and have filed new Schedules I and J which show that they are capable of making the mortgage payments on the two loans if they are provided loan modification relief on the arrearage. *Id.*, ¶ 7.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$331,270.11 (Declaration, Dckt. 77). Debtor values the Property at \$575,179.00, as stated in Schedules A/B and D filed by Debtor, whereas Movant's Broker's Price Opinion values the Property at \$558,900.00 (Dckt. 78).

11 U.S.C. § 362(d)(1)

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction

of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). ~~Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).~~

Here, there are adequate protection payments in the plan proposed by Debtor and filed on December 23, 2020. Dckt. 89. A motion to confirm has been set for hearing on February 9, 2021. Dckt. 85. The plan provides for adequate protection payments to Movant in the amount of \$1,958.30.^{FN.1.}

FN.1. In the plan, both creditors with liens on the Property are provided Janus treatment, where both creditors are listed under Class 1 and under Section 7.02 of the Additional Provisions Debtor stating that the actual treatment are adequate protection payments pending determination of the loan modification.

At the hearing, the payment of adequate protection payments in the amount of \$ ~~XXXXXXX~~ per month actually having been made for the months ~~XXXXXXX~~

Moreover, Debtor testifies that they are pursuing loan modifications with both creditors submitted August 2020 which are still pending. The court notes that Movant does not address this in their motion for relief. Counsel for Debtor reports that documentation is submitted and awaiting a response.

At the hearing, counsel for Movant reported that his client has not processed a loan modification application.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, it appears that there may be some equity and Debtor are addressing it through adequate protection payments. ~~In light of the prosecution of the plan, the court denied relief under 11 U.S.C. § 362(d)(2).~~

Request for Attorneys' Fees

In the Motion, Movant requests that it be allowed attorneys' fees. The Motion alleges contractual grounds for such fees, in that under the loan documents Movant is entitled to its costs and

expenses in enforcing its interest to the extent not prohibited by applicable law. Specifically, Page 2 Section 7(E) of the Note states:

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by Applicable Law. Those expenses include, for example, reasonable attorneys' fees.

Exhibit 1, Dckt. 78, at p. 5.

Movant is seeking \$1,231 in attorney's fees as a result of the fees incurred in the filing of this motion. Part of those fees include a \$181 filing fee while the remaining balance can be attributed to the amount incurred by Movant's attorneys in drafting this Motion.

At the hearing, Movant agreed to continue the hearing in light of the ongoing loan modification application efforts.

February 9, 2021 Hearing

As of the preparation of this pre-hearing disposition, no further documents have been filed updating the court regarding the loan modification.

At the hearing, the Parties agreed to continue the hearing, and have it conducted in conjunction with the continued hearing on the Motion to Confirm the Plan in this case.

March 23, 2021 Hearing

As of the preparation of this pre-hearing disposition, no further documents have been filed updating the court regarding the loan modification.

At the hearing **xxxxxxx**

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Employ is granted.

Travis Jake Stevenson and Lucelyn Ann Stevenson ("Debtor") seeks to employ Daniel Parisi of EXP Realty of California ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to assist Debtor in the sale of real estate property for the benefit of Debtor and all creditors in interest.

Debtor argues that Broker's appointment and retention is necessary to assist Debtor in establishing the fair market value, market, and sell real property commonly known as 3708 N Edge Street, Sacramento, California ("Property"), for the benefit of the Debtor and all creditors in interest. The court summarizes the services and terms of employment as follows (the full terms are stated in the Listing Agreement, Exhibit A, Dckt. 78):

1. The listing price shall be \$750,000.00.
2. Debtor agrees to pay Broker as compensation for services 5 percent of the listing price (or if purchase agreement entered into, of the purchase price).
3. Debtor instructs Broker NOT to market the Property to the public. Marketing will consist only of direct one-to-one promotion. Nor does Debtor authorize for the placement of a For Sale sign on the Property.
4. The Listing Agreement between Debtor (as Seller) and Broker expires June 30, 2021.

Daniel Parisi, a Real Estate Agent of EXP Realty of California, testifies that he has been employed by Debtor as the real estate agent ready to list the Property for sale; is a licensed real estate salesperson, licence number 01878277; is familiar with the Sacramento market; and has discussed the marketing and selling of the Property with Debtor. Daniel Parisi testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Parisi Decl. Dckt. 79.

Trustee's Non-Opposition

The Chapter 13 Trustee, David Cusick, filed a Non-Opposition on March 3, 2021 stating no opposition to the employment of Broker and noting that Debtor's Motion to Sell the Property is set to be heard the same day as this motion. Dckt. 85.

DISCUSSION

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Daniel Parisi as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit 1, Dckt.78. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Travis Jake Stevenson and Lucelyn Ann Stevenson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor is authorized to employ EXP Realty of California as Broker for Debtor on the terms and conditions as set forth in the Listing agreement filed as Exhibit 1, Dckt. 78.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

20. [18-23567](#)-E-13 **TRAVIS/LUCELYN STEVENSON** **MOTION TO SELL**
[PSB-4](#) **Paul Bains** **2-23-21 [71]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)©.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2021. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Travis Jake Stevenson and Lucelyn Ann Stevenson, the Chapter 13, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 3708 N Edge Street, Sacramento, California ("Property").

The proposed purchaser of the Property is Christian Lozano, and the terms of the sale are

summarized by the court as follows (the full terms are stated in the Purchase Agreement, Exhibit A, Dckt. 74):

- A. The purchase price offered is \$780,000 with a initial deposit of \$10,000 due within three days of offer acceptance.
- B. Close of escrow shall occur 35 days after acceptance, at which time the remaining \$770,000 is due, \$640,000 consisting of a first loan and \$130,000 consisting of the remaining down payment due.
- C. Buyer and Seller shall split 50-50: escrow fee and owner's title insurance.
- D. Seller shall pay: county transfer tax, city transfer tax, natural hazard disclosure report, and the cost (not to exceed \$600) of a standard one-year home warranty plan.

Trustee's Non-Opposition

Trustee filed a Non-Opposition on March 8, 2021. Dckt. 83. Trustee does not oppose the sale at the above stated price; which based on the Seller's Estimated Net Proceeds statement generates sufficient proceeds to pay 100% to allowed claims under Debtors' confirmed plan.

Creditor's Non-Opposition

Creditor Wells Fargo Bank N.A. filed a Non-Opposition on March 4, 2021. Dckt 81. Creditor has no opposition to Debtor's Motion to Sell the Property provided Creditor's claim secured by a First Deed of Trust on the Property in the amount of \$342,575.00 is paid off in full satisfaction of the debt. *Id.*

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale of this Property will allow Debtor to fund their plan at 100 percent of the claims.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately \$39,000. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5 percent commission.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Travis Jake Stevenson and Lucelyn

Ann Stevenson, the Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Travis Jake Stevenson and Lucelyn Ann Stevenson, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Christian Lozano (“Buyer”), the Property commonly known as 3708 N Edge Street, Sacramento, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$780,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 74, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker’s commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. The 5 percent commission shall be paid to broker, EXP Realty of California.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is [granted](#).

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Jesse Soto Ortiz ("Debtor"), has filed evidence in support of confirmation. Exhibit A, Dckt. 154; Declaration, Dckt. 155. No opposition to the Motion has been filed by creditors.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 9, 2021 stating that Debtor has explained the general circumstances causing the modification and has filed Supplemental Schedules I and J. Dckt. 166. However, Trustee requests the court take into consideration that Debtor last paid December 8, 2020, and the Schedules indicate that Debtor has the ability to pay \$7,900 effective February 2021 but no explanation is given for why the modified plan does not call for a payment for that month. *Id.*

At the hearing [xxxxxxx](#)

~~The Modified Plan complies / does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jesse Soto Ortiz (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 15, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.~~

22.	<u>18-25370-E-13</u> <u>DPC-6</u>	JESSE ORTIZ Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 1-28-21 <u>[147]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 28, 2021. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is XXXXX.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Jesse Soto Ortiz (“Debtor”), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 17, 2021. Dckt. 159. Debtor states the a modified plan has been filed and set for hearing on March 23, 2021. Under the proposed modified plan, Debtor will be current.

DISCUSSION

Debtor is \$38,974.09 delinquent in plan payments, which represents multiple months of the \$9,724.71 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor responds that the modified plan and motion to confirm have already been filed. The Chapter 13 Trustee has agreed to a continuance of the hearing to afford Debtor the opportunity to prosecute the case.

Filing of a Modified Plan

Debtor filed a Modified Plan and Motion to Confirm on February 15, 2021. Dckt. 153, 151. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 155. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

TRUSTEE'S REPLY

Trustee filed a Reply on February 24, 2021. Dckt. 162. Trustee states that Debtor has not paid since December 8, 2020 and that it is not clear why no payments for February 2021 is scheduled through the proposed plan. Trustee is not opposed to the motion to dismiss and the motion to modify being continued to see if the March 25, 2021 payment of \$7,950.00 is made.

The court continues the hearing as requested by the Chapter 13 Trustee.

March 23, 2021 Hearing

At the hearing **xxxxxxx**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss this Chapter 13 Case filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **xxxxxxx**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is XXXXX.

Lauren C. Hayes ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor misclassified Creditor's claim as an unsecured claim.
- B. The Plan improperly modifies a claim secured by Debtor's principal residence.
- C. Debtor's plan is not feasible.
- D. Debtor did not propose the plan in good faith.

Debtor filed an Opposition to the Objection on January 5, 2021. Dckt. 23. The opposition is discussed below.

DISCUSSION

Failure to Provide for a Secured Claim

Creditor filed Proof of Claim 1-1 asserting a secured claim of \$62,680.62 in this case, with the security having been obtained through a judgment lien. Debtor does not list Creditor in Schedule D and instead is listed in Schedule E/F as a nonpriority unsecured claim in the amount of \$62,680.62; with the claim is listed in the plan as a Class 7 unsecured claim in the plan. Creditor alleges that the Plan treatment violates 11 U.S.C. § 1325(a)(5) because it misclassifies Creditor's secured claim as an unsecured claim in Class 7 with a proposed distribution of no less than 26%.

Through a separate claim objection, which the Debtor and Creditor consented to the court determining the extent, validity, and priority of Creditor's interest in the property created by the asserted abstract of judgment as part of the Objection to Claim Contested Matter (waving the adversary proceeding requirement of Fed. R. Bankr. P. 7001(2)), the court has determined that the abstract of judgment did not create a judgment lien and is of no force and effect due to Creditor's failure to comply with the requirement so California Code of Civil Procedure § 674.

Claim of Homestead Exemption

Creditor asserts that Debtor cannot claim a \$100,000 homestead exemption pursuant to California Code of Civil Procedure § 704.730.730(a)(2). Objection, p. 3:28, 4:1; Dckt. 17. In his Opposition, Debtor argues that the exemption is proper because:

[D]ebtor provides necessary and critical basic needs of living support care to his mother . . . [and Debtor] is not required to be married nor claim dependents on his tax returns to qualify for the \$100,000 exemption pursuant to CCP § 704.730(a)(2)
...

Opposition, p. 2:16-20.

The court has sustained the Objection to the \$100,000 homestead exemption, and allowed Debtor a \$75,000 homestead exemption. The property in which the homestead exemption is claimed, 10343 Lime Kiln Road, Grass Valley, California (the "Property") is stated on Schedule A/B to have a value of \$340,000. Dckt. 1 at 11.

The Property is subject to the secured claim of NewRez, LLC with a claim of (\$223,102.39). Proof of Claim 2-1, which is consistent with the amount stated by Debtor on Schedule D (Dckt. 1 at 18).

With a value of \$340,000, and after subtracting the (\$223,102.39) NewRez, LLC secured claim and the (\$75,000) homestead exemption, there remains \$41,898 of value in the Property for payment of creditor claims.

Modification of an Obligation Secured Only by Principal Residence

Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$62,680.62, secured by an abstract of judgment document #

20200024316 against the property commonly known as 10343 Lime Klin Road, Grass Valley, California. Debtor's Schedules indicate that this is Debtor's primary residence. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

The court having determined that Creditor does not have a lien on the Property, this grounds of the Opposition is overruled.

Additionally, the provisions of 11 U.S.C. § 1322(b)(2) apply only to a "security interest." Congress defines that term as follows:

(51) The term "security interest" means lien created by an agreement.

(50) The term "security agreement" means agreement that creates or provides for a security interest.

11 U.S.C. § 101(51), (50).

Here, Creditor did not claim a security interest in the form of a lien created by agreement, but a judicial lien involuntarily, without the need of any agreement, asserted to be placed on the Property by Creditor. The term "judicial lien" is defined separate and apart from a "security interest:"

(36) The term "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

11 U.S.C. § 101(36). Even if Creditor had the judicial lien on the Property, it would not be protected by 11 U.S.C. § 1322(b)(2). *See* 8 Collier on Bankruptcy ¶ 1322.06 [1][a][ii] (Sixteenth Edition), "Liens may be statutory liens or judicial liens rather than security interests. A claim secured by a lien other than a security interest on real estate that is the debtor's principal residence may also be modified by a chapter 13 plan."

Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Here, Debtor's proposed plan payment of \$350 per month is not sufficient to pay Creditor's secured Claim. Though the court has determined that Creditor does not have a secured claim, the court has reviewed Debtor's proposed reasonable expenses on Schedule J.

In looking at Schedule J, it appears that the Expenses stated by Debtor are questionable as being sufficient. Some that appear questionable include:

Water, Sewer, Garbage Collection.....(\$6.00)

Food and Housekeeping Supplies.....(\$300.00)

Assuming (\$50.00) a month for supplies for a household of two persons, that would leave (\$250) in food expense for Debtor. In a thirty day month, that would allow Debtor (\$2.77) per meal. Debtor surviving on (\$2.77) per meal for sixty months does not appear reasonable, actual, or feasible.

Clothing, Laundry, Dry Cleaning.....(\$20.00)

This too appears questionable that Debtor can maintain/survive having only \$240 a year to spend on his jeans, underwear, tee shirts, casual shirts, socks, nice clothing and the like.

Medical and Dental Expense.....(\$0.00)

It is not clear how Debtor, over a sixty month period, will never have any out of pocket medical expenses. There is not sufficient “cushion” in other expenses to provide medical and dental expense coverage.

Transportation.....(\$90.00)

This is for gas, maintenance, repairs, registration, and the like (excluding insurance). On Schedule A/B Debtor lists owing two vehicles, a 1990 Toyota pickup with 190,000 miles and a 1974 Chevrolet Custom Deluxe with 250,000 miles. Dckt. 1 at 11, 11. Both of these vehicles have extremely high mileage are appear to be ones which will have substantial repair and maintenance expense, though low registration fees.

Even if all Debtor paid the (\$90.00) a month was for gas, at \$3.50 a gallon, he could purchase twenty-five gallons of gas a month. Assuming that these older, high mileage vehicles average twenty miles to the gallon, then he could drive sixteen miles a day in a thirty-day month. Such does not appear to be reasonable or feasible over the sixty months of the Plan.

Entertainment, Recreation.....(\$50.00)

It does not appear that Debtor’s (\$50.00) a month for sixty months of entertainment is reasonable.

In reviewing Schedule J, it appears that this may well be creation of Debtor and Debtor’s counsel to justify a pre-determined \$350 a month plan payment.

Even before considering the increase for the \$41,898 of non-exempt equity in the Property, Debtor has not provided the court with sufficient evidence that the plan with \$350 a month payments is feasible.

The current plan with \$350 a month payment for sixty month would have the Debtor fund the plan with \$21,000.00.

With the reduction in the amount of the homestead exemption, the court must consider the Chapter 7 liquidation value requirement of 11 U.S.C. § 1325(a)(4). With a value of \$340,000 as stated by both Debtor and Creditor, if the property was sold by a Chapter 7 Trustee the net sales proceeds, after 8% for costs of sale, the liquidation value would be computed as follows:

Gross Sales Proceeds.....\$340,000
8% costs of sale.....(\$ 27,200)
NewRez Secured Claim.....(\$223,102)
Homestead Exemption.....(\$ 75,000)

Net Chapter 7 Sales Proceeds.....\$14,698

Chapter 7 Trustee Fees.....(\$ 2,219)
(11 U.S.C. §326(a))

Thus, if Debtor can show that the \$350.00 a month plan payment (for total plan payment of \$21,000) is feasible, then the Plan would appear to be adequately funded for liquidation value in light of the 26% dividend provided in the Plan.

Good-Faith Filing

Creditor alleges that the Plan was not filed in good faith. *See* 11 U.S.C. § 1325(a)(7). Good faith depends on the totality of the circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Thus, the Plan may not be confirmed. Factors to be considered in determining good faith include, but are not limited to:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;**
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;**
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy code;**
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and**
- 11) The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988) (quoting *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (emphasis added).

The court having determined that Creditor does not have a secured claim, then the asserted grounds that the Debtor has not filed the plan in good faith based on: (1) Creditor's claim is misclassified as an unsecured claim, (2) Debtor is attempting to inappropriately modify the value of Creditor's secured claim, and (3) Debtor's net monthly income is too low to meet the monthly payment required to pay Creditor's secured claim are overruled.

February 23, 2021 Hearing

The court's ruling on the Objection to Claim have resolved in Debtor's favor the Objections based on the Plan not providing for Creditor's secured claim. However, Creditor's Objection on feasibility and the Objection to Claim of Exemption have now brought to light the serious question of whether this Plan is feasible.

The court further continues the hearing as the one creditor in this case and the Debtor review possible settlements.

Supplemental Declaration

On March 2, 2021 Debtor filed a Declaration testifying under penalty of perjury that he has experience living on a tight budget for an extended period of time and explains that his monthly expenses are partly subsidized and his mother has applied for food stamps for herself which decreases Debtor's assistance to his mother. He also testifies that he is current in plan payments after some issues with the electronic system having failed to process his December 2020 payment.

Moreover, Debtor testifies that he now has a permanent monthly reduction of \$121.02 in his homeowner's insurance expense which will be used for other expenses. Indeed, Debtor testifies that \$50.00 of this reduction will be applied to increase his plan payment which results in a change from \$350.00 per month to \$400.00 per month. Debtor also testifies that in the rest of the reduction, \$71.02, addresses feasibility concerns as this amount is now available for unforeseen expenses in all categories of basic living expenses to be applied as needed month by month.

Debtor's testimony specifically includes (the court reformatting for ease of reading) the following concerning Debtor's expenses:

Shortly prior to [the February 23, 2021] this hearing, I reviewed the tentative ruling issued by the Court, and I noted the Court's concern regarding feasibility, and in particular pointing out [1] water, sewer, garbage collection...(\$6.00); [2] food and housekeeping supplies...(\$300.00) [assuming (\$50.00) a month for supplies and (\$250) for food]; clothing, laundry, dry cleaning...(\$20.00); [3] medical and dental expense... (\$0.00); [4] transportation...(\$90.00); and [5] entertainment, recreation...(\$50.00). These amounts reflect my actual average monthly expenses, in that

[1] I have well water and my garbage collection is subsidized,

[2] I have much life experience of living on as little as \$3 per day for food and am actually doing so at present,

[3] both my mother and myself have medical coverage and no emergent medical situations to my knowledge exist,

[4] my employer provides a vehicle and my only out-of-pocket transportation expenses are for only a small amount of driving in my local Grass Valley, CA area, and

[5] I can actually reduce this and use the funds for other categories, if necessary.

Other than the general, abstract possibility that any of these could become problematic at some unknown point in the future, I am presently aware of absolutely no facts at present of anything specific, such as a specific medical condition that will require treatment or a specific car repair that is required, etc., that would require additional funds.

Supplemental Declaration, Dckt. 55.

March 23, 2021 Hearing

At the hearing xxxxxxxx

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 21, 2020. By the court’s calculation, 48 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Plan is XXXXX.</p>

The debtors, Shawn Scott Dickinson and Monique Dennee Dickinson (“Debtor”) seek confirmation of the Chapter 13 Plan. The Plan provides for payments of \$1,774.27 for five (5) months, followed by payments of \$1,959.00 for 55 months, and a 100 percent dividend to unsecured claims totaling \$12,237.62. Plan, Dckt. 35. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on November 24, 2020. Dckt. 48. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan is overextended.
- B. Debtor has failed to disclose child support debt.
- C. Debtor has failed to file all applicable tax returns.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 97 months due to mortgage arrears, priority taxes, and child support are higher than scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee does not know if the \$666.25 listed on Schedule I as “Domestic support obligation” is the actual ongoing payment, an arrears payment, or an amount set by Debtor. Trustee request that Debtor amend Schedules D and E/F so they may reflect domestic support obligations.

Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2017, 2018, and 2019 tax years have not been filed still. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor filed a Supplemental to the Motion and a Declaration on December 4, 2020. Dckts. 53, 54. Debtors testify under penalty of perjury that:

1. Domestic Support Obligations are post-petition current, and the pre-petition arrearage is provided for under Section 3.12 of the plan.
2. All the tax returns for the last four years prior to the filing of this case have been filed.

The court notes that Debtor fails to address Trustee’s concerns regarding the tax returns. Debtor testifies that all taxes have been filed but no evidence is presented and there still is a Proof of Claim from the Franchise Tax Board for \$658.96 and a Proof of Claim from the Internal Revenue Service for \$32,826.51.

Debtor has also failed to explain the amount listed for the “Domestic Support Obligation.”

At the hearing, counsel for the Trustee reported that the returns appear to have been filed pre-petition. The Domestic Support Checklist has been provided.

Debtor’s counsel requested that this be continued to March 23, 2021, to allow for documentation of the tax returns, in the COVID-19 environment. The Trustee concurred with the request for a continuance.

March 23, 2021 Hearing

As of the preparation of this pre-hearing disposition, no further pleadings or documents have been filed.

At the hearing **xxxxxxx**

25. [19-21277-E-13](#) **JASON/ TIFFANIE RUPCHOCK** **MOTION TO MODIFY PLAN**
[PLC-11](#) **Peter Cianchetta** **2-4-21 [143]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2021. By the court's calculation, 47 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is xxxxx.

The debtors, Jason Peter Rupchock and Tiffanie Ann Rupchock ("Debtor") seek confirmation of the Modified Plan to address unexpected changes in their finances, and high amounts of unsecured debts. Declaration, Dckt. 145. The Modified Plan provides payments of \$1,131.36 for 60 months, and a 25 percent dividend to unsecured claims totaling \$72,534.79. Modified Plan, Dckt. 146. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 148. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not provided Trustee with satisfactory explanation for changes in monthly income and monthly expenses.
- B. Class 4 vehicle is not included in the proposed plan.

DISCUSSION

Unexplained Reductions in Expenses and Income

Again, the Chapter 13 Trustee brings to the court's attention that Debtor's prior Schedules I and J, filed September 9, 2020, Dckt. 125, lists monthly disposable income of \$8,575.21, monthly expenses of \$7,279.33, and monthly net income of \$1,295.88. The recent "Amended / Supplemental" Schedules I and J Debtor filed on January 18, 2021 indicate a reduced income of \$8,234.08 and reduced monthly expenses of \$7,266.00, which indicate a monthly net income of \$971.08. Dckt. 140. However, Schedule I does not indicate a change in Debtor Jason's employer.

Trustee has previously raised this objection in Debtor's prior Motion to Modify, and mentions that the Court also raised concern about Debtor's schedule being marked both amended and supplemental. Civil Minutes, Dckt. 132, pp. 2-3.

Trustee contends Debtor has not provided an explanation for the purported changes in income and expenses, or whether or not Debtor Jason has had a change in employment in this modification.

Debtor has been given opportunities to address these issues and yet has failed to do so.

Unlisted Class 4 Vehicle

Trustee states that Debtor's proposed Modified Plan does not include a 2017 Toyota Camry SE in Class 4. Debtor's filed a Motion to Authorize Debtor to Incur Post-Petition Debt, Dckt.102, which was subsequently granted pursuant to order filed June 6, 2020. Dckt.118. Debtor's Supplemental Schedule J filed September 9, 2020, budgets a monthly car payment of \$413.33, where Schedule J filed January 18, 2021, budgets a car payment for \$400.00. Debtor's proposed modified Plan does not include this vehicle in Class 4. The Trustee has previously raised this objection.

Independent Review—Net Income Shortfall

Debtor's Amended Schedule J, filed on January 18, 2021, lists a \$971.08 monthly net income, while the Modified Plan provides for a \$1,131.36 monthly payment. Taken together, they suggest that the Plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

Though neither the Chapter 13 Trustee, the U.S. Trustee, nor any creditor has raised the issue, the court has an independent duty to make certain that the requirements for confirmation have been met. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158,

173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Jason Peter Rupchock and Tiffanie Ann Rupchock (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is granted.
--

The debtor, Ramon Moreno ("Debtor") seeks confirmation of the Modified Plan to address the following:

1. Reclassify creditor Bank of America, N.A. from a Class 2 claim to a Class 3 claim after the vehicle securing the claim was totaled in an accident and the insurance company will send the insurance proceeds to Trustee who will pay creditor in full;
2. Account for Debtor's girlfriend having lost her part-time job and thus reducing her contribution to household expenses from \$2,500.00 per month to \$1,100 per month;
3. Account for Debtor's new job with increased commuting costs; private purchase of life insurance to replace lost employer sponsored plan; and
4. Update his expenses as there has been an increase in utility and car insurance costs.

Declaration of Ramon Moreno, Dckt. 25 and Declaration of Jadelyn Burke, Dckt. 27. The Modified Plan provides payments of \$600.00 for 49 months, and a 31 percent dividend to unsecured claims totaling approximately \$60,000.00. Modified Plan, Dckt. 24. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 35. Trustee opposes confirmation of the Plan on the basis that the Plan does not incorporate insurance proceeds pursuant to and order from the court entered on February 21, 2021.

DISCUSSION

Failure to Incorporate Insurance Proceeds

Trustee received \$9,623.89 in insurance proceeds from Progressive Insurance for Debtor's 2013 Dodge Durango that was totaled in an accident. Of these funds and pursuant to the court's order, \$3,930.24 was to be treated as an additional payment to pay off the claim of Bank of America, N.A. regarding the vehicle, and \$5,693.65 was to be refunded to Debtor.

The Trustee's records reflect the claim to Bank of America has been paid in full and a refund to debtor of \$5,693.65 was issued on February 24, 2021. While Debtor references the insurance proceeds in the Motion and Declaration, the additional plan payment was not incorporated in the modified plan.

Debtor filed a Response on March 16, 2021 requesting the order confirming the plan include the following language:

"\$3,930.24 from the insurance proceeds of \$9,623.89 from Progressive Insurance shall be treated as an additional payment to pay off the claim of Bank of America, N.A. for the 2013 Dodge Durango and the \$5,693.65 was to be refunded to Debtor."

Dckt. 38.

Debtor having address Trustee's objection, the Modified Plan, as amended, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Ramon Moreno ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 16, 2021, as amended to provide,

\$3,930.24 from the insurance proceeds of \$9,623.89 from Progressive Insurance shall be treated as an additional payment to pay off the claim of Bank of America, N.A. for the 2013 Dodge Durango and the \$5,6932.65 was to be refunded to Debtor.

is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. [20-24280-E-13](#) **SHELISA TURNER** **CONTINUED MOTION TO CONFIRM**
[GSJ-1](#) **Grace Johnson** **PLAN**
12-23-20 [39]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2020. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Plan is XXXXX.

The Debtor, Shelisa Kay Turner ("Debtor") seeks confirmation of the First Amended Chapter 13 Plan. The Plan provides monthly plan payments of \$6,471.00 per month for 60 months, and 100% dividend to creditor with unsecured claims totaling approximately \$15,585.75. Plan, Dckt. 43. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on January 26, 2021. Dckt. 46. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor has not filed all business related tax returns.
- B. Debtor may not be able to make the payments under the plan.

DISCUSSION

Failure to File Tax Returns

Debtor shows 100% ownership of two LLCs and admitted at the Meeting of Creditors that she has not filed all her business tax returns, having only filed personal returns for the past 4 years. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan calls for adequate protection payments for the claim of the Carrington Company for 11 months, with no class specified. The provision also calls for a motion to sell or refinance by July 1, 2021, but does not specify a result if no motion is filed. The plan calls for the Creditor to be treated as Class 3 if no sale or refinance occurs by September 15, 2021. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

On Schedule I Debtor states that she is employed as a Care Taker and her employer is "IHSS." Further, that Debtor has been so employed for 20 years as a care taker. From her \$5,860.00 in monthly wages, Debtor has \$643.36 withheld for federal and state income taxes, Medicare, and Social Security. Dckt. 12 at 24. Debtor lists having an additional \$2,136.33 in monthly net income from operating a business or rental property. *Id.*

At the end of the Statement of Financial Affairs a Business Income and Expenses Statement. *Id.* at 52. On it Debtor states having \$6,136.33 in monthly gross business income. Debtor lists the following expenses for the business:

Purchase of Feed/Fertilizer/Seed/Spray.....	(\$900)
Utilities.....	(\$800)
Repairs and Maintenance.....	(\$100)
Vehicle Expense.....	(\$400)
Travel and Entertainment.....	<u>(\$300)</u>
Total.....	(\$4,000)

After these (\$4,000) in necessary expenses, Debtor has net income of \$2,216.33. Debtor's expenses are running 65% of gross income.

On the Statement of Financial Affairs Debtor states she is a member of two limited liability companies - Royal Hearts Transportation, LLC and Royal Hearts Nursing Income Care.

It does not appear that any provision is made for the additional \$25,635 of the limited liability income, which is on top of Debtor's \$70,320 in wages for IHSS.

In looking at the expenses stated on Schedule J, even though Debtor has no dependents, it appears that her (\$876) in monthly expenses are unreasonably low. Debtor states having (\$266) in real estate taxes, but no property insurance, repair, maintenance, utilities, phone, or internet expenses. For food and housekeeping supplies, Debtor lists only \$250 a month. Debtor's transportation expenses are only \$100 a month. Though owning three vehicles, Debtor has no vehicle insurance. Schedules A/B and J; Dckt. 12. Though Debtor owns "horses" (Schedule A/B, Dckt. 12 at 5), Debtor has no veterinary, fee, or stabling expenses.

The Debtor requested, and the Trustee did not oppose, a continuance to allow for the filing of amended Schedules I and J, and other financial information to demonstrate the feasibility of the proposed Plan.

March 23, 2021 Hearing

As of the preparation of this pre-hearing disposition, no further pleadings or documents have been filed.

At the hearing **xxxxxxx**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)©.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2021. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
-----.

The Motion to Approve Loan Modification is xxxxxx.

The Motion to Approve Loan Modification filed by Tanya Dorene Hall ("Debtor") seeks court approval for Debtor to incur post-petition credit. Real time Resolutions ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor's second mortgage payment from the current \$531.00 per month to \$520.33 per month. The modification changes the terms of the loan from a single balloon payment in the amount of \$61,150.00 with a 9.875 percent interest, fully due and maturing December 1, 2021; to a fully amortized ten (10) year loan with the adjusted amount of \$62,437.70, at the rate of zero (0) percent interest with a monthly payment of \$520.33 beginning January 2021.

The Motion is supported by the Declaration of Tanya Dorene Hall. Dckt. 74. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S RESPONSE

On March 12, 2021, Trustee filed a Response opposing approval of the modification on the basis that Debtor has not filed Supplemental Schedules I and J demonstrating ability to make this new payment. Debtor's current Schedule J (Dckt. 1) shows monthly net income of \$2,823.31, and the Debtor's proposed plan (Dckt. 60) shows a plan payment of \$3,034.40. Dckt. 77.

Moreover, Trustee objects to the plan's treatment for this creditor where the Plan classifies creditor as a Class 4 claim to be paid directly by Debtor and Creditor has filed an amended Proof of Claim with the terms of the instant modification. *Id.*; *see also* Proof of Claim 2-3.

DISCUSSION

Though the terms of the modification seem to be beneficial to Debtor, Debtor has yet to show that she can afford the plan payments. Moreover, Debtor having been in default on the original loan with this particular creditor, Debtor has also misclassified this claim.

At the hearing, **XXXXXXX**

~~The court shall issue an order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Approve Loan Modification filed by Tanya Dorene Hall ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the court authorizes Tanya Dorene Hall to amend the terms of the loan with Real time Resolutions ("Creditor"), which is secured by the real property commonly known as 338 Nevada Street, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion (Dckt. 75).~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2020. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is ~~XXXXX~~.

The debtor, Tanya Dorene Hall ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$3,034.40 for 60 months, and a 0% dividend to unsecured claims totaling \$8,446.00. Amended Plan, Dckt. 60. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on February 9, 2021. Dckt. 67. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor overextends the plan as it will take approximately 92 months.
- B. Debtor misclassified a secured claim.
- C. Debtor may not be able to comply with the Plan.
- D. Debtor failed to list any information on Schedule I regarding her second employer.

- E. Expenses may not be accurate on Schedule J as Debtor has not listed any information regarding her second employer.
- F. Debtor fails to list assets on Schedule B.

DISCUSSION

Failure to Complete Plan Within Allotted Time

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 92 months due to claims being filed for amounts higher than Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Class 4 Claim

Debtor lists Real Time Resolutions, Inc. As a Class 4 claim. However, Creditor's Proof of Claim shows that the debt matures during the bankruptcy and is in default \$62,127.00. Proof of Claim 2. Class 4 claims are claims Debtor may pay directly provided they are not in default. This particular Creditor having filed a proof of claim showing a default, Debtor has misclassified this Creditor as a Class 4 claim.

Failure to Afford Plan Payment

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that at the Meeting of Creditors Debtor admitted she has a second job not listed on Schedule I nor its expenses listed on Schedule J. Moreover, Debtor also admitted to receiving a refund of \$3,108.83 from previous case #19-20429, which was not disclosed on her current statements. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The hearing is continued to allow Debtor file a motion to approve loan modification and proposed amendments to the Plan.

March 23, 2021 Hearing

Debtor's Motion to approve the loan modification of the second mortgage on the residence was **granted / denied**.

At the hearing **xxxxxxx**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Kevin Jeffrey Macy and Kristy Ann Macy ("Debtor") seeks confirmation of the Modified Plan because Debtor has experienced financial hardship as a result of the pandemic, including difficulty in maintaining stable employment and securing unemployment benefits. Declaration, Dckt. 79. The Modified Plan provides payments of \$1,525.00 beginning February 25, 2020 for 68 months, and a zero (0) percent dividend to unsecured claims totaling \$69,030.25. Modified Plan, Dckt. 77. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on March 9, 2021. Dckt. 90. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is delinquent \$1,525.00 under the proposed plan.
- B. Trustee is unable to assess the feasibility of or effectively administer the plan due to post-petition mortgage arrears.

DISCUSSION

Delinquency

The Chapter 13 Trustee asserts that Debtor is \$1,525.00 delinquent in plan payments, which represents one month of the proposed \$1,525.00 plan payment. Trustee asserts that \$14,888.06 has come due through February, 2021, and Debtor has paid to date \$13,363.06. Debtor's last payment in the amount of \$1,442.00 posted on October 20, 2020. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor filed a Response on March 15, 2021. Dckt. 93. Debtor asserts they will be current on or before the hearing on this matter. *Id.* at ¶ 1.

At the hearing xxxxxxxx

Post-Petition Arrearage

Trustee asserts that due to Debtor's failure to make plan payments, Trustee has been unable to make class 1 creditor PHH Mortgage Services installment payments in the amount of \$6,313.28 for the months of December 2019, June, August, September, November, and December of 2020, and January and February of 2021. Trustee's accounting shows that the amount due for the unpaid installments is \$11,373.78.

Trustee argues that while the modified plan does attempt to specify a cure of the post-petition arrearage, it incorrectly accounts for seven months with a \$5,595.09 due. The correct amount is eight months, leaving a current principal due of \$6,313.28. Thus, Trustee is unable to fully comply with Section 3.07 of the Plan.

In his Response, Debtor states that once Debtor is current under the proposed plan, Trustee will have the funds needed to make the February 2021 payment. Dckt. 93.

Moreover, Debtor requests that the following language be added to the order confirming the plan:

"The post-petition mortgage arrears owed to PHH Mortgage shall be provided for as a Class 1 claim in the amount of \$5,595.09 at an interest rate of 0.00% and an arrearage dividend of \$85.00. The post-petition arrearage constitutes seven (7) mortgage payments for the following months: December 2019; June, August, September, November, and December 2020; and January 2021."

Id. at ¶ 3.

At the hearing xxxxxxxx

~~The Modified Plan complies / does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and~~

~~The court shall issue an order substantially in the following form holding that:~~

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Kevin Jeffrey Macy and Kristy Ann Macy (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

31.	<u>19-25889</u> -E-13 <u>DPC</u> -2	KEVIN/KRISTY MACY Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 2-2-21 [71]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 2, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is XXXXX.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Kevin Jeffrey Macy and Kristy Ann Macy (“Debtor”), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 17, 2021. Dckt. 83. Debtor states the a modified plan has been filed and set for hearing on March 23 2021. Under the proposed modified plan, Debtor will be current.

DISCUSSION

Debtor is \$9,821.64 delinquent in plan payments, which represents multiple months of the \$1,504.93 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor responds that the modified plan and motion to confirm have already been filed. The Chapter 13 Trustee has agreed to a continuance of the hearing to afford Debtor the opportunity to prosecute the case.

Filing of a Modified Plan

Debtor filed a Modified Plan and Motion to Confirm on February 16, 2021. Dckt. 77, 75. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 79. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. Fed. R. Evid. 601, 602.

TRUSTEE'S RESPONSE

On February 24, 2021, Trustee filed a Response noting to the court that Debtor has not made a payment since October 20, 2020 and requests the court consider continuing the motion to dismiss to allow the motion to modify to be heard. Dckt. 86.

In light of the payment issue, the court grants the Chapter 13 Trustee's request to continue the hearing.

March 23, 2021 Hearing

At the hearing **xxxxxxx**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)©.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2021. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Incur Debt is XXXXX.
--

Yvonne Johnson ("Debtor") seeks permission to obtain a Small Business Administration ("SBA") loan to purchase safety equipment for Debtor's daycare business including partitions (room dividers), children's playground equipment, and an outdoor water faucet, with a total loan amount of approximately \$30,000.00 at an interest rate of 3.25 percent over 20 years, first payment due approximately one year after grant.

According to Debtor's Declaration, no pre-approval has been received from the SBA as they require court permission before they process the business loan. Dckt. 106. The Motion, however states the following:

6. Debtor received pre-approval from the SBA as they are requiring court permission first to be able to process the business loan.

Dckt. 104.

TRUSTEE'S RESPONSE

Trustee filed a Response on March 8, 2021 requesting the court consider the following:

1. Debtor is delinquent in the amount of \$5,815.43 (approximately two plan payments) with the last payment posted on December 23, 2020. Debtor's motion mis-states the plan payment amount of \$2,925.00, where the payment increased to \$2,938.81 on December 1, 2020 as a result of a Notice of Mortgage Payment filed September, 23, 2020.
2. Debtor is representing this loan is needed for Debtor's business, but it is not clear if the business is operating as no plan payments have been made in the last two months.
3. Debtor has failed to provide exhibits supporting her request to incur an SBA loan. Additionally, Debtor's Motion and Declaration are inconsistent on the pre-approval status of the SBA loan process. Trustee posits that Debtor has likely submitted an application or other written communication detailing the terms, even if there is no final approval.
4. Debtor has not provided sufficient detail to justify debt at the \$30,000 level. Debtor states specific reasons for the loan, but does not clarify if these are the exclusive reasons.

Dckt. 112.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001©. *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001© requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor filed a Response on March 15, 2021 requesting a short continuance in order for Debtor to meet with counsel and supplement the record on this matter.

At the hearing xxxxxx

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Yvonne Johnson ("Debtor") having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxx**.

33. [18-22123](#)-E-13 ROBERT/KATHRYN PETERSON CONTINUED STATUS CONFERENCE:
[18-2121](#) COMPLAINT
SHEKELLE V. PETERSON ET AL 7-23-18 [\[1\]](#)

Plaintiff's Atty: Stephen T. Cammack; Donald S. Burris
Defendant's Atty: David Foyil

Adv. Filed: 7/23/18
Reissued Summons: 10/10/18
Answer: 11/9/18

Nature of Action:
Dischargeability - priority tax claims
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 3/18/21 at 11:00 a.m. by request/stipulation of the Parties. Order filed 3/12/21
[Dckt 90]

The Status Conference is XXXXX.

MARCH 23, 2021 STATUS CONFERENCE

Plaintiff Elsa Shekelle, Trustee of the Martha J. Voester Living Trust, has filed a Motion to Enforce Settlement Agreement and for entry of judgment pursuant thereto. Defendant-Debtor Robert Peterson and Kathryn Peterson, file a partial opposition, concluding with:

Defendants/Debtors will agree to a judgment amount without offset because they were unable to ascertain evidence to prove offset, however, Plaintiffs attorney must secure waivers and agreement of non-party beneficiaries.

Opposition, ¶ 10; Dckt. 80.

As discussed by the Court of Appeal, it is well established law that a settlement agreement is interpreted according to the same principles as any other written agreement:

A settlement agreement is interpreted according to the same principles as any other written agreement. (*Gouvis Engineering v. Superior Court* (1995) 37 Cal.App.4th 642, 649.) It must be interpreted to give effect to the mutual intent of the parties as it existed at the time, insofar as that intent can be ascertained and is lawful. (Civ. Code, § 1636; *Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 730.) If the language of the agreement is clear and explicit and does not involve an absurdity, determination of the mutual intent of the parties and interpretation of

the contract is to be based on the language of the agreement alone. (Civ. Code, §§ 1638, 1639; *Sass v. Hank* (1951) 108 Cal.App.2d 207, 211 [238 P.2d 652].)

While the court may interpret the terms of the parties' settlement agreement, “nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810, italics omitted; see *Hernandez v. Board of Education* (2004) 126 Cal.App.4th 1161, 1176 (*Hernandez*); *Reed v. Murphy* (1925) 196 Cal. 395, 399 [“if a consent judgment or decree is different from or goes beyond the terms of the stipulation which forms its basis it may be set aside upon appeal or by other appropriate procedure, as it would not be in reality a consent judgment”].)

Leeman v. Adams Extract & Spice, LLC, 236 Cal. App. 4th 1367, 1374 (Cal. App. 2015).

With respect to the entry of a judgment as provided in a settlement agreement, California Law provides, in pertinent part,:

§ 664.6. Judgment pursuant to terms of settlement

(a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement. . . .

Cal Code Civ Proc § 664.6.

The court has applied these principles to the Settlement Agreement executed by Plaintiff and Defendants, approved as to form by their respective attorneys, as part of ruling on the Motion to Enforce the Settlement Agreement.

XXXXXXX

MARCH 3, 2021 STATUS CONFERENCE

The court has previously continued the Status Conference to allow the Parties to avail themselves of the Bankruptcy Dispute Resolution Program (“BDRP”) to see if they could find a settlement of these matters. Civil Minutes, Dckt. 69.

On February 23, 2021, Plaintiff filed an updated Status Report. Dckt. 79. Plaintiff confirms that a Motion to Enforce the Settlement Agreement achieved through BDRP was filed on February 18, 2021. Plaintiff requests that the court continue the Status Conference until after that Motion has been adjudicated.

The Motion to Enforce Settlement Agreement is filed at Docket Entry 73. The Motion includes a long discussion of the history of the dispute - both prior to the filing of the bankruptcy case and the Settlement Agreement. In paragraph 13 of the Motion, Plaintiff discusses there being a November 13, 2019 BDRP session that consumed many hours, which culminated in the “Bankruptcy Dispute Resolution Agreement” (which the court has referred to as the “Settlement Agreement”). The Settlement Agreement is provided as Exhibit 5 to a Request for Judicial Notice and is authenticated in the Declaration of Stephen Cammack (who authenticates the copy attached as Exhibit 1 to Plaintiff’s Status Report, See Dckt. 79.)

JANUARY 6, 2021 STATUS CONFERENCE

On December 18, 2020, Defendant-Debtor filed an updated Status Report. Dckt. 63. Defendant-Debtor reports that the parties have agreed to settlement terms after completing a mediation in November 2020. It is further reported that no trial will be necessary in this Adversary Proceeding.

Plaintiff has filed a Status Report stating that Defendant has breached their settlement and a Motion for Entry of Judgment will be filed. Defendant-Debtor disputes that entry of judgment is proper.

The court continues the Status Conference to allow for the presentation of this issue to the court.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Defendant-Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 18, 2021. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Enforce Settlement Agreement for Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Enforce Settlement Agreement for Judgment is granted, and the court shall enter a Nondischargeable Judgment in the amount of \$114,341.70, which will accrue post-judgment interest at the rate of 10% per annum.

Elsa Shekelle, Trustee of the Martha J. Voester Living Trust, the Plaintiff in this adversary proceeding ("Plaintiff") seeks an order from the court enforcing the settlement agreement reached through the Bankruptcy Dispute Resolution Program Conference in November 2019.

Terms of the Settlement Agreement

The Settlement Agreement (Exhibit A, Dckt. 81) is signed by the following persons:

Kathryn Peterson, Defendant

Robert Peterson, Defendant

David Foyil, Attorney for Defendants, Approved as to Form

Elsa Shekelle, Trustee, Plaintiff

Stephen T. Cammack, Attorney for Plaintiff, Approved as to Form

Settlement Agreement, last two unnumbered pages of Settlement Agreement.

The terms of the Settlement Agreement are restated by the court below:

Whereas Plaintiff and Defendant with their respective attorneys of record, participated in a Bankruptcy Dispute Resolution on November 13, 2019 with Mark A. Wolf, Esq. as Resolution Advocate.

Whereas, Plaintiff and Defendant entered into a Stipulated Agreement/Resolution of this Adversary Proceeding, as follows:

1. Stipulated Judgment of Non-Dischargeability in the amount of \$70,341.70 and \$44,000.00 in Attorney's fees/costs for Plaintiff and against Defendants;
2. Non-Dischargeable Judgment subject to credit of \$38,776.68 upon Plaintiff's receipt of original notarized releasers and full release of claims against/to Martha J. Voester Living Trust and Elsa Shekelle, Trustee from children of Defendants;
3. Additional Credit on Non-Dischargeable Judgment in the amount of \$21,900.00 subject to reasonable proof by Defendants of
 - a) \$21,900.00 payment from Union Bank was Trust Estate Property; and
 - b) Entire amount of \$21,900 was the entire amount of Union Bank – all amounts of account distributed to Plaintiff
 - c) Proof of Two credits submitted by Defendants within 30 days of date of execution of this Stipulation;Reasonable extensions authorized;
4. Bankruptcy Court reserves jurisdiction;
5. Plaintiff maintains Discovery/subpoena rights to verify information as to Union Bank account;
6. If parties cannot agree as to credit for distribution of Union Bank account, the Bankruptcy Court / Judge Klein (or, another assigned Bankruptcy Judge) will adjudicate applicability of credit from Union Bank payment;
7. Payment of this principal non-dischargeable debt will be paid by Defendant through the Chapter 13 Plan over a time frame of five years from date of plan. Defendants will amend their Chapter 13 plan for payment of this non-dischargeable debt;

8. Plaintiff dismisses her El Dorado County Superior case against Defendant(s); case no. PP20160033;
9. Defendants dismisses their Motion Objecting to Claim against Plaintiff;
10. Stipulated Judgment of Non-dischargeability submitted to Bankruptcy Court / Judge Klein for Order Approving;
11. Stipulated to contained standard release of all claims language, Ca. Civil Code section 1542 - all claims known and unknown;
12. Nondischargeable Judgment to accumulate 10% per annum simple interest until paid in full; interest remaining unpaid upon completion of Chapter 13 Plan, paid directly by Defs. to Plaintiff;
13. Should bankruptcy Court action be necessary to interpret and/or enforce this settlement/resolution, the prevailing party will be entitled to an award of attorney's fees and cost.
14. If parties submit dispute of applicability of Union Bank credits to the Bankruptcy Court, Plaintiff will not assert 5th Amendment Bar of Evidence against Defendants.

Exhibit 5, quoting language of Settlement Agreement, Dckt. 75. The exhibit is the handwritten terms of the Settlement Agreement as drafted the day of the mediation. The court notes that each page of the Settlement Agreement has been initialed by the Plaintiff and Defendants, in addition to the signatures on the signature pages.

Motion to Enforce Settlement Agreement

In support of the Motion, Plaintiff has filed the Declaration of Stephen T. Cammack ("Cammack"). Dckt. 77. Counsel testifies that pursuant to Paragraph 10 of the handwritten Settlement Agreement, he prepared three formal documents related to the terms and conditions of the Agreement:

1. Stipulation for Judgment of Nondischargeability of Debt per Stipulated Settlement in Bankruptcy Dispute Resolution Program,
2. Order Approving Stipulation for Judgment of Nondischargeability of Debt per Stipulated Settlement in Bankruptcy Dispute Resolution Program, and
3. Judgment of Non-Dischargeability of Debt per Stipulated Settlement in Bankruptcy Dispute Program.

Counsel further testifies that once it was time for Defendant-Debtor to execute the terms of the Settlement Agreement, Plaintiff was left to wonder what was going on. After submitting the documents listed above on February 4, 2020, Counsel asserts that no communications occurred except for an email from an administrative assistant from Defendant's Counsel's office. According to Counsel Cammack, this communication seems to have been related to paragraphs 2 and 3 of the Agreement, where the email referred

to and included bank records which would provide for a reduction on the non-dischargeable debt if Defendant could submit reasonable proof that Union Bank funds in the amount of \$21,900 had been distributed to the beneficiaries of the Trust. The email however, included American Investor Company bank records related to a \$23,500 payment that Defendant stated was distributed to beneficiaries and further stated that the Union Bank records could not be provided because they were no longer available. Additionally, the email requested Plaintiff submit a “notarized full release of all claims against/for the Martha J. Voester Living Trust.” According to Counsel Cammack, this request is related to paragraph 2 of the Settlement Agreement which called for Plaintiff to “receive” a notarized Full Release of Claims to Plaintiff and the Martha J. Voester Living Trust from the children of Defendant-Debtor.

Plaintiff’s Counsel further asserts that Defendant-Debtor’s Counsel stop communicating with him after this email and no communications were ever received as to the formal settlement documents sent for Defendant-Debtor to execute even after numerous calls and messages. On July 15, 2020, Counsel Cammack again sent the formal settlement documents via email to Defendant’s Counsel and two paralegals at the firm.

Plaintiff Counsel further testifies that he was unaware of the details that needed to be changed in the language of the Agreement as reference by the Status Report filed by Defendant-Debtor on February 12, 2021 and it was indeed the first communication from Counsel responding to the formal settlement pleading documents. Plaintiff argues that to date, no formal response has been received about the changes that need to be made nor has Plaintiff received executed formal documents.

Plaintiff argues that the order is necessary as Defendant-Debtor continues to breach the Settlement Agreement by failing to:

- a. submit the executed formal documents;
- b. submit the executed/notarized releases of claim against Plaintiff and the Trust;
- c. provide proof of credit/reduction regarding the Union Bank payments;
- d. amend their Chapter 13 Plan to commence the agreed-upon monthly payments to Plaintiff; and
- e. dismiss their Objection to Plaintiff’s claim.

Plaintiff further contends that Defendant-Debtor’s delay of these proceedings for over a year, failure to provide the executed documents and commence making payments shows a pattern of bad faith practiced by Defendant-Debtor since the Probate litigation.

The Motion not only seeks an order to enforce the Settlement Agreement achieved through the BDRP. According to paragraph 23 of the Motion, Plaintiff seeks the following:

- A. An order enforcing the Bankruptcy Dispute Resolution Agreement,
- B. The issuance of a Judgment for Non-Dischargeability of Debt against the Defendant-Debtor in the total agreed-upon amount of \$70,341.70 and

\$44,000 – in the total principal amount of \$114,341.70.

- C. An order of ten percent per annum simple interest on this nondischargeable principal judgment from the date of February 4, 2020 (when the formalized documents were sent to Defendant-Debtor's Counsel), pursuant to paragraph 12 of the BDRP Settlement Agreement.
- D. An order dismissing with prejudice Defendant's Objection to Plaintiff's Claim in the underlying Chapter 13 case; and
- E. For the court to allow a subsequent motion for an award of attorney's fees and costs against Defendants and the required enforcement of the BDRP Agreement, pursuant to paragraph 13 of the Agreement.

Defendant-Debtor Opposition

Defendant-Debtor filed an Opposition to the requested relief on March 4, 2021 arguing first that the sanctions order related to the Probate action filed with El Dorado County Superior Court are void on their face on the basis that it is Defendant-Debtor's position that none of the work in that case was properly performed because that state court never acquired jurisdiction.

As to the Settlement Agreement, Defendant- Debtor admits that such an agreement was reached and signed at the BDRP mediation. However, Defendant-Debtor contends that the formalized proposed judgment incorporated additional terms and conditions that were not part or inconsistent with terms of the settlement agreement. Moreover, Defendant-Debtor argues that it was Plaintiff's responsibility to prepare the documents related to the waivers and releases from third parties not joined to the action. Because such documents had not been prepared, Defendant argues they "could not sign the Judgment in good faith."

Defendant then explains that while trying to obtain Union Bank statements for the \$21,900 payment, they discovered that the bank did not retain records for that time. Therefore, Defendant-Debtor agrees to a judgment amount without offset because they have been unable to obtain this evidence.

Finally, Defendant disputes any requests for attorney's fees from Plaintiff's counsel arguing that counsel failed to secure the agreements, never followed up but instead filed the instant motion without making any attempt to resolve that issue.

Interpretation of Settlement Agreement

As discussed by the Court of Appeal, it is well established law that a settlement agreement is interpreted according to the same principles as any other written agreement:

A settlement agreement is interpreted according to the same principles as any other written agreement. (*Gouvis Engineering v. Superior Court* (1995) 37 Cal.App.4th 642, 649.) It must be interpreted to give effect to the mutual intent of the parties as it existed at the time, insofar as that intent can be ascertained and is lawful. (Civ. Code, § 1636; *Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal.App.3d 726, 730.) If the language of the agreement is clear and explicit and does not involve an absurdity, determination of the mutual intent of the parties and interpretation of

the contract is to be based on the language of the agreement alone. (Civ. Code, §§ 1638, 1639; *Sass v. Hank* (1951) 108 Cal.App.2d 207, 211 [238 P.2d 652].)

While the court may interpret the terms of the parties' settlement agreement, “nothing in section 664.6 authorizes a judge to create the material terms of a settlement, as opposed to deciding what terms the parties themselves have previously agreed upon.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810, italics omitted; see *Hernandez v. Board of Education* (2004) 126 Cal.App.4th 1161, 1176 (*Hernandez*); *Reed v. Murphy* (1925) 196 Cal. 395, 399 [“if a consent judgment or decree is different from or goes beyond the terms of the stipulation which forms its basis it may be set aside upon appeal or by other appropriate procedure, as it would not be in reality a consent judgment”].)

Leeman v. Adams Extract & Spice, LLC, 236 Cal. App. 4th 1367, 1374 (Cal. App. 2015).

With respect to the entry of a judgment as provided in a settlement agreement, California Law provides, in pertinent part,:

§ 664.6. Judgment pursuant to terms of settlement

(a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement. . . .

Cal Code Civ Proc § 664.6.

DECISION

The clear, plain language of the Settlement Agreement provides for a nondischargeable judgment as follows:

1. Stipulated Judgment of Non-Dischargeability in the amount of \$70,341.70 and \$44,000.00 in Attorney’s fees/costs for Plaintiff and against Defendants;

Exhibit A, Stipulation, ¶ 1; Dckt. 81.

Further, with respect to interest on this obligation, the Parties further expressly provide in the Stipulation Agreement:

12. Nondischargeable Judgment to accumulate 10% per annum simple interest until paid in full; interest remaining unpaid upon completion of Chapter 13 Plan, paid directly by Defs. to Plaintiff;

Id., ¶ 12.

Plaintiff and Defendant-Debtor have stipulated to the entry of a \$114,341.70 nondischargeable monetary judgment by the bankruptcy court. Then, when the nondischargeable monetary judgment is entered, it will accrue interest at the rate of 10% per annum (California post-state court judgment interest rate), which is significantly higher than the federal rate of judgment interest.

The Settlement Agreement does not impose any conditions precedent on the entry of the nondischargeable judgment, nor does it provide for any interest to accrue on the Settlement Amount, but expressly provides for interest on the nondischargeable judgment.

The Settlement Agreement further provides for certain credits against the obligation owed on the Nondischargeable Judgment:

2. Non-Dischargeable Judgment subject to credit of \$38,776.68 upon Plaintiff's receipt of original notarized releasers and full release of claims against/to Martha J. Voester Living Trust and Elsa Shekelle, Trustee from children of Defendants;
3. Additional Credit on Non-Dischargeable Judgment in the amount of \$21,900.00 subject to reasonable proof by Defendants of
 - a) \$21,900.00 payment from Union Bank was Trust Estate Property; and
 - b) Entire amount of \$21,900 was the entire amount of Union Bank – all amounts of account distributed to Plaintiff
 - c) Proof of Two credits submitted by Defendants within 30 days of date of execution of this Stipulation;

Reasonable extensions authorized;

Id.

Defendant-Debtor's counsel argues that entry of the Nondischargeable Judgment is not proper, first arguing:

6. Plaintiff's attorney failed to prepare necessary documents to effect the agreement, including not securing the agreement of third parties not joined to the action.
7. Enforcement of the judgment is contingent upon cooperation and agreement of third parties over which the court has no jurisdiction. Plaintiff's attorney was to prepare the necessary waivers and agreements and never did so. Therefore, the Defendants/Debtors could not sign the Judgment in good faith.

Opposition, ¶¶ 6, 7; Dckt. 80. While making this argument, Defendant-Debtor does not cite the court to any language in the Settlement Agreement imposing a duty on Plaintiff or Plaintiff's attorney to prepare or to have received the waivers and agreement as a condition precedent for the entry of the default judgment. Rather, it states that when Plaintiff "receives" the releases, the "Non-Dischargeable Judgment [will be] subject to credit of \$38,776.68 Exhibit A, Settlement Agreement, ¶ 2; Dckt. 81. Plaintiff is to receive,

not to “prepare,” “track down,” and “convince the Defendant-Debtor’s children to sign releases.”

Similarly, Defendant-Debtor will receive an additional credit on the Nondischargeable Judgment of \$21,900.00, with “Proof of Two credits submitted by Defendants within 30 days of date of execution of this Stipulation;” *Id.*, ¶ 3. This term does not relate to a condition precedent for the entry of the Nondischargeable Judgment, but a credit once the Nondischargeable Judgment has been entered. Further, the language in Paragraph 3 of the Settlement Agreement indicates that Defendant-Debtor is to provide proof of two credits.

The court grants the Motion and shall enter the Nondischargeable Judgment in the amount of \$114,341.70 pursuant to the Settlement Agreement executed by the Parties to this Adversary Proceeding. Further, that this Nondischargeable Judgment shall accrue post-judgment interest at the rate of 10% per annum simple interest as further agreed by the Parties in the Settlement Agreement.

Attorney’s Fees

With respect to attorney’s fees, the Settlement Agreement contains the following contractual attorney’s fees provision:

13. Should bankruptcy Court action be necessary to interpret and/or enforce this settlement/resolution, the prevailing party will be entitled to an award of attorney's fees and cost.

Id., ¶ 13.

Defendant-Debtor has provided the court with documents stated to have been transmitted by Plaintiff’s counsel for entry of a judgment as provided in the Settlement Agreement. The first document (Exhibit B, Dckt. 81) what is titled:

STIPULATION FOR JUDGMENT
OF NONDISCHARGEABILITY
OF DEBT PER STIPULATED
SETTLEMENT IN
BANKRUPTCY DISPUTE
RESOLUTION PROGRAM

This appears to be a stipulation for the parties to stipulate to enter the Nondischargeable Judgment as previously agreed in the Settlement Agreement. It is unclear why there needs to be a stipulation to have a judgment as previously provided in the Settlement Agreement. It then has the parties stipulate to have a nondischargeable judgment in the amount of \$114,341.70 entered.

There is also included as Exhibit B a draft order “Approving” the Stipulation. The draft order “approves” the Stipulation, but does not provide for the entry of the Nondischargeable Judgment.

The final document with Exhibit B is a document titled:

JUDGMENT OF
NONDISCHARGEABILITY OF
DEBT PER STIPULATED
SETTLEMENT IN
BANKRUPTCY DISPUTE
RESOLUTION PROGRAM

Though titled “Judgment,” the operative language of this document is an “Order,” stating that the relief is as follows:

IT IS HEREBY ORDERED that Judgment of Nondischargeability will be granted to Plaintiff . . . , against [Defendant-Debtor] in the amount of . . . (\$114,341.70.”

Further, that the judgment will accumulate ten percent simple interest from the entry of the judgment. Finally, that the judgment will be paid pursuant to the terms and conditions of the “Stipulation for Judgment of Nondischargeability of Debt Per Stipulated Settlement in the Bankruptcy Court Dispute Resolution Program.”

If entered by the court, the “Judgment” would be little more than an order providing that at some future date a judgment is to be entered.

After the court has entered the Nondischargeable Judgment in the amount of \$114,341.70, a “prevailing party” may seek the allowance of attorney’s fees and costs as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Enforce Settlement Agreement for Judgment filed by Elsa Shekelle, Trustee of the Martha J. Voester Living Trust (“Plaintiff”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Enforce Settlement Agreement for Judgment is granted. The court shall enter judgment for Non-Dischargeability of Debt against the Defendant-Debtor in the total agreed-upon amount of \$70,341.70 and \$44,000 – in the total principal amount of \$114,341.70.

IT IS FURTHER ORDERED a ten percent per annum simple interest shall be included on this nondischargeable principal judgment from the date of February 4, 2020.

FINAL RULINGS

35. [18-22810-E-13](#) **LYNBERG/CHONALYN RUBI** **MOTION TO MODIFY PLAN**
[WW-2](#) **Mark Wolff** **2-17-21 [29]**

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice and Office of the United States Trustee on February 17, 2021. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Lynberg Rubi and Chonalyn Rubi ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on March 8, 2021. Dckt. 38. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Lynberg Rubi and Chonalyn Rubi ("Debtor") having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 17, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

36.	<u>21-20310-E-13</u> <u>MBW-1</u>	TIESHA FISHER Jason Vogelpohl	OBJECTION TO CONFIRMATION OF PLAN BY SAFE CREDIT UNION 3-3-21 <u>[25]</u>
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Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 3, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

Safe Credit Union ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Plan fails to provide for a secured claim.

NEW PLAN FILED

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Subsequent to the filing of this Objection, Debtor filed a Second Amended Plan on March 18, 2021, Dckt. 31, but has not yet filed a motion to confirm the Second Amended Plan. Filing a new plan is a *de facto* withdrawal of the pending plan. The Objection is sustained, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained, and the proposed Chapter 13 Plan is not confirmed.

37.	<u>21-20118-E-13</u> <u>DPC-1</u>	HEATHER VAUGHN Mikalah Liviakis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-25-21 [14]
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Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on February 25, 2021. By the court’s calculation, 26 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<p>The Objection to Confirmation of Plan is overruled.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that Debtor failed to provide Social Security Number at Meeting of Creditors.

DISCUSSION

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Debtor filed a Response to Trustee's Objection and states she has applied for a replacement social security card and will provide it at the continued Meeting of Creditors set for March 18, 2021. Dckt. 18.

Trustee reported that Debtor appeared at the continued Meeting of Creditors and the meeting has been concluded as to Debtor. Trustee's March 18, 2021 Docket Entry Statement. Thus, the court resolves this objection in favor of Debtor.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Heather Neal Vaughn's ("Debtor") Chapter 13 Plan filed on January 15, 2021, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Charles Lawless and Lorri Lawless ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on March 8, 2021. Dckt. 50. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Charles Lawless and Lorri Lawless ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 10, 2021, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

39. <u>21-20022-E-13</u> STEPHANIE POWERS <u>DPC-1</u> Peter Macaluso 39 thru 40	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-17-21 <u>[20]</u>
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Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, and Debtor’s Attorney on February 17, 2021. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The Objection to Confirmation of Plan is overruled.
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that the Plan relies on a Motion to Value Collateral not yet filed.

DISCUSSION

Trustee’s objections were well-taken.

A review of Debtor’s Plan shows that it relies on the court valuing the secured claim of Travis Credit Union. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6).

A review of the docket shows that on February 11, 2021 Debtor filed a Motion to Value the Secured Claim of Travis Credit Union. Dckt. 15. The motion is set to be heard on March 23, 2021. Debtor requests that this matter be continued to allow the Motion to Value Collateral be heard.

March 23, 2021 Hearing

Debtor's Motion to Value was granted, and the collateral was valued at the value sought by Debtor. Thus, this objection is resolved in Debtor's favor.

The Objection is overruled. There being no other grounds for objecting to Debtor's proposed plan, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a), and Debtor's plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and Stephanie Ann Powers's ("Debtor") Chapter 13 Plan filed on January 5, 2021, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2021. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral and Secured Claim of Travis Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$8,134.00.

The Motion filed by Stephanie Powers ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Declaration, Dckt. 17. Debtor is the owner of a 2013 Honda Accord ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$8,134.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Trustee does not oppose the valuation and notes that Creditor is included in the proposed plan as a Class 2B and that Creditor has not yet filed a Proof of Claim. Dckt. 27.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on March 28, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,000.00. Declaration, Dckt. 17. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of \$8,134.00,

the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Stephanie Powers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Travis Credit Union (“Creditor”) secured by an asset described as 2013 Honda Accord (“Vehicle”) is determined to be a secured claim in the amount of \$23,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$8,134.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 12, 2021. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Matthew Rubb ("Debtor"), has filed evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Matthew Rubb ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 12, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

42. [19-22941](#)-E-13
[DPC-3](#)
42 thru 43

MONICA MARIA
Grace Johnson

CONTINUED MOTION TO DISMISS
CASE
2-1-21 [\[70\]](#)

Final Ruling: No appearance at the March 3, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 1, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Monica Lynn Maria (“Debtor”), is delinquent in plan payments.

Debtor has not filed an opposition to the Motion to Dismiss. Fortunately, the Chapter 13 Trustee filed a “Reply” (Dckt. 81) notifying the court of the Motion to Confirm and proposed Modified Plan, and requesting that the court continue the hearing on the Motion to Dismiss.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on February 8, 2021. Dckts. 78,74. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 77. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the hearing on the Motion to Dismiss is continued as requested by the Chapter 13 Trustee.

March 23, 2021 Hearing

On March 23, 2021, Debtor's Modified Plan, Dckt. 78, filed on February 8, 2021 was confirmed.

Based on the foregoing, the Motion is denied.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 9, 2021. By the court's calculation, 14 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Monica Maria ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response indicating non-opposition on March 9, 2021. Dckt. 85. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Monica Maria ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 8, 2021, Dckt. 78, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as

to form, and if so approved, the Trustee will submit the proposed order to the court.

44. [20-25551](#)-E-13 **MARVIN/WINIFRED JENKINS** **MOTION TO CONFIRM PLAN**
[BLG-2](#) **Chad Johnson** **2-3-21 [23]**

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 3, 2021. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Marvin Laroy Jenkins and Winifred Jenkins ("Debtor") has provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement of non-opposition on March 5, 2021. Dckt. 34. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Marvin Laroy Jenkins and Winifred Jenkins ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on February 3, 2021 is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

45. [19-25364-E-13](#) **FONDA HINKLE** **MOTION TO MODIFY PLAN**
[GEL-2](#) **Gabriel Liberman** **2-16-21 [45]**

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Fonda Marie Hinkle ("Debtor"), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement of non-opposition on March 9, 2021. Dckt. 59. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Fonda Marie Hinkle (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 16, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

46. [19-25167](#)-E-13 **TANYA NORFLES** **AMENDED MOTION TO MODIFY**
[PGM-6](#) **Peter Macaluso** **PLAN**
2-16-21 [[103](#)]

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2021. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Tanya Michelle Norfles (“Debtor”), has filed evidence in support of confirmation. Declaration, Dckt.102. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick (“Trustee”), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Tanya Michelle Norfles (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on February 15, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

47. [17-20471-E-13](#) **DEANNA TORREZ** **MOTION TO MODIFY PLAN**
[PGM-3](#) **Peter Macaluso** **2-10-21 [80]**

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2021. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Confirm the Modified Plan is granted.
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Deanna

Maria Torrez("Debtor"), has filed evidence in support of confirmation. Declaration, Dckt. 83. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Deanna Maria Torrez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on February 10, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the March 23, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, David Earl Neihart and Sharon Dale Neihart ("Debtor"), has filed evidence in support of confirmation. Declaration, Dckt. 81. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a statement of non-opposition on March 9, 2021. Dckt. 84. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, David Earl Neihart and Sharon Dale Neihart ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified

Chapter 13 Plan filed on February 9, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.